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6 *Attorneys for Defendant Lynn Martinez*

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

10 NATIONWIDE LIFE INSURANCE  
COMPANY,

CASE NO. 2:16-cv-01845

11 Plaintiff,

12 vs.

13 LYNN MARTINEZ, AMERICAN  
14 FUNERAL FINANCIAL, LLC,  
DIANE COLLEY, MICHELLE  
15 COLLEY, MELISSA COLLEY and  
MEGAN COLLEY,

**STIPULATION AND ORDER  
DISCHARGING NATIONWIDE  
LIFE INSURANCE COMPANY  
AND FOR DISMISSAL**

16 Defendants.

17 ECF No. 36

18 This Stipulation is entered by and between the following parties, by and  
19 through their respective counsel: Nationwide Life Insurance Company  
20 (“Nationwide”), Lynn Martinez (“Martinez”), America Funeral Financial, LLC  
21 (“AFF”), Diane Colley, Michelle Colley, Melissa Colley and Megan Colley  
22 (collectively, the “Colleys”).

23 **FACTS**

24 1. On or about November 30, 1992, Nationwide issued its Life Insurance  
Policy Number L030421220 (the “Policy”), to David Colley. David Colley was  
25 both the owner of and insured under the Policy.

26 2. In his application for the Policy, Mr. Colley listed his then spouse,

1 Defendant Diane Colley, as the primary beneficiary under the Policy. Mr. Colley  
2 listed his daughters, Michelle Colley, Melissa Colley and Megan Colley, as  
3 contingent beneficiaries.

4       3. On or about October 16, 2015, Nationwide received an Application for  
5 Change of Beneficiary Designation by which Mr. Colley requested that the primary  
6 beneficiary under the Policy be changed to Lynn Martinez, "girlfriend/fiancé," and  
7 that the contingent beneficiaries be changed to Robert R. Roik, "friend," Lisa  
8 Johnson, "friend," Jeffrey Strough, "friend," and Jayme Strough, "friend."  
9 Mr. Colley's signature is dated October 16, 2015, and his signature witnessed by  
10 Carla Roik on December 1, 2015.

11       4. Mr. Colley died on March 4, 2016.

12       5. On March 8, 2016, Nationwide received an "Insurance Assignment"  
13 from Defendant AFF purporting to assign \$11,738.80 in Policy death benefits to  
14 AFF. The Assignment Form is signed by Defendant Lynn Martinez and is dated  
15 March 7, 2016.

16       6. On or about April 11, 2016, Nationwide received a Life Beneficiary  
17 Claim Form from Defendant Lynn Martinez, requesting payment of the Policy's  
18 death benefits to her.

19       7. On or about April 19, 2016, Nationwide received a letter from Diane  
20 Colley, indicating that Mr. Colley was placed into a nursing home in October, 2015,  
21 due to his condition of a "brain tumor" and that he "was not able to make clear  
22 decisions." Diane Colley questioned the October, 2015, change of beneficiary to  
23 Defendant Lynn Martinez because "Mr. Colley was being manipulated in his  
24 condition." Diane Colley requested that Nationwide immediately investigate this  
25 matter.

26       8. As a result of the foregoing, Nationwide is unsure as to whom should  
27 receive the Policy's death benefits.

28       9. Nationwide is, and always has been, ready, able and willing to pay the

1 death benefits due under the Policy to the person(s) who may be lawfully entitled to  
2 receive them. Nationwide, however, is unable to determine who is entitled to  
3 receive the death benefits payable under the Policy, as between the Defendants,  
4 without being faced with the real and reasonable potential of multiple claims and  
5 liability under the Policy.

6 **STIPULATION**

7 10. Nationwide is a disinterested stake holder and has no interest in the  
8 death benefits payable under the Policy.

9 11. Nationwide shall pay \$11,738.30 to the Payne & Fears LLP Client  
10 Trust Account on behalf of AFF from the Policy proceeds. Nationwide shall  
11 deposit the remainder of the Policy proceeds with the Clerk of the Court.

12 12. Martinez and the Colleys shall separately litigate their rights to the  
13 Policy proceeds. Specifically, the Colleys shall amend their answer and add a  
14 counterclaim stemming from their belief that the change of beneficiary designation  
15 to the Nationwide policy is inappropriate, at which time Martinez shall file her  
16 answer.

17 13. Nationwide will be released, discharged and forever acquitted from  
18 any and all liability in connection with, arising out of, or relating to the issuance of  
19 the death benefits payable under the Policy, upon payment of the \$11,738.30 to  
20 AFF and the remainder of the Policy proceeds to the Clerk of the Court.

21 14. This action shall be dismissed with prejudice, as to Nationwide and  
22 AFF, only, with each to bear its own attorneys' fees and costs.

23 15. Following the dismissal of Nationwide and AFF with prejudice, the  
24 Colleys and Martinez shall litigate their claims regarding the payment of the  
25 remaining Policy proceeds.

26 16. That after the Colleys amend their answer and add the counterclaim as  
27 referenced above, the Colleys and Martinez request that this matter be referred to a  
28 Magistrate Judge for a settlement conference.



DATED: May 18, 2017

THOMPSON COBURN LLP

By: /s/ John L. Viola

John L. Viola  
Admitted Pro Hac Vice  
Attorney for Plaintiff, Nationwide  
Life Insurance Company

DATED: May 18, 2017

THRONE & HAUSER

By: /s/ Dawn R. Throne

Dawn R. Throne  
Nevada Bar No. 6145  
Attorneys for Defendant and Cross  
Defendants Diane Colley, Michelle  
Colley, Melissa Colley and Megan  
Colley

DATED: May 18, 2017

SOLOMON DWIGGINS & FREER,  
LTD.

By: /s/ Jeffrey P. Luszek

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Attorneys for Defendant and Cross-  
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DATED: May 18, 2017

WOODBURN AND WEDGE

By /s/ W. Chris Wicker.

W. Chris Wicker, Esq.  
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Attorney for Plaintiff, Nationwide  
Life Insurance Company

DATED: May 18, 2017

PAYNE & FEARS LLP

By: /s/ Chad Olsen

Gregory H. King  
Nevada Bar No. 7777  
Chad Olsen, Nevada Bar No. 12060  
Attorneys for Defendant and Cross-  
Claimant, American Funeral  
Financial, LLC

## ORDER

IT IS SO ORDERED. All claims in this action by and against Nationwide Life Insurance Company and American Funeral Financial, LLC are DISMISSED with prejudice. The Colley defendants have until June 12 to file an amended answer and crossclaim against Martinez. Failure to file a crossclaim by that date will result in the dismissal of this entire case for lack of a pending claim. Once the crossclaim has been filed, the remaining parties may move for a referral to a magistrate judge for a settlement conference.

U.S. District Judge Jennifer Dorsey  
6-1-17